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Before the
FEDERAL COMMUNICATIONS COMMISSION

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In the Matter of)
Application by BellSouth Corporation,)
et. al. for Provision of In-Region,)
InterLATA Services in South Carolina)

CC Docket No. 97-208

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

REPLY COMMENTS OF

THE CONSUMER FEDERATION OF AMERICA

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LAST CHANCE FOR LOCAL COMPETITION

EXECUTIVE SUMMARY

RECOMMENDATION

The Consumer Federation of America (CFA) urges the Federal Communications Commission (FCC) to deny BellSouth Telecommunications' (BST) request to provide in-region, interLATA long distance service in South Carolina. Based upon state and region-wide evidence on BST performance of the requirements of section 271 of the Telecommunications Act of 1996 (the Act), we believe that BST falls far short of meeting the conditions for entry. The problems in BST's application run a wide gamut from fundamental legal problems, to operational difficulties, to severe weaknesses in BST's provision of access to the public switched network.

The evidentiary record demonstrates not only that there is no real competition for residential ratepayers, not only that BST has failed to meet the requirements of the Act, but that BST has been actively creating severe problems for potential competitors. Should BST's practices persist, there will be little chance for meaningful local competition to develop for residential customers in South Carolina.

The FCC must continue to reject RBOC applications for in-region long distance until the RBOCs get it right. This must not be a war of attrition, as some have suggested, in which the FCC will eventually say "yes" because it is too tired to keep saying "no."

- The benefits of local competition are overwhelming.
- The policy paths to local competition and long distance entry were defined in the Act and have been well-articulated by the FCC and the Department of Justice (DOJ).
- The process and substance have been supported by a wide array of state officials and public interest groups.

THE GOAL: PROMOTING THE PUBLIC INTEREST THROUGH COMPETITION IN ALL TELECOMMUNICATIONS MARKETS

BST and the RBOCs have gone to great lengths to make the claim that allowing entry into the long distance market in-region would promote the public

interest because it would bring greater competition to the long distance market. These claims are fundamentally flawed for two reasons.

First, they vastly overstate the benefits of RBOC entry into the long distance market. The DOJ has refuted BST's claims showing that BST and the RBOCs are far off the mark in their estimates of benefits.

- Just as marketers use fraudulent and misleading comparisons in their advertising, RBOC witnesses compare the lowest discounted price offered by LEC entrants (GTE and SNET) to the competitors' highest undiscounted rates, forgetting that there is a great deal of discounting already in the market.
- RBOC discounts are actually no larger than many already observed in the marketplace. There is virtually no category of customer who cannot beat the prices offered by new LEC entrants into long distance with a rate plan that existed before the LEC entered.
- BST uses different prices for different purposes. BST's hired external witness assumed discounts that are three times larger than BST officials were willing to commit to.

When these mistakes are eliminated, the overwhelming majority of consumers are not likely to save a great deal as a result of RBOC entry into the long distance market.

Second, BST's analysis of the public interest ignores the benefits of competition in the local market. The local market is twice the size of the long distance market and remains a near monopoly, as it has been for almost a century.

- CFA estimates that for every one dollar of savings consumers might realize from increased competition in long distance, there are at least four dollars that might be gained as a result of introducing competition into the local market.

Premature entry of RBOCs into long distance has a number of anti-competitive implications that would deal a severe blow to local competition and the public interest.

- RBOCs would be the only entity that could offer an attractive integrated bundle of local and long distance services and would lose all incentive to cooperate in opening their markets to competition.

- Premature entry drives competitors to use resale as the primary approach to competition, since that is the easiest alternative, but it is the form of competition that provides the least threat to incumbents.

Claims that local competition has not been created because long distance companies are not trying hard enough to get into the local market because they do not want the RBOCs to get into long distance are refuted by simple logic and the evidentiary record in this proceeding.

- Not one RBOC has come forward to make a showing that potential competitors are failing to negotiate in good faith or failing to meet their schedules as, the RBOCs are allowed under section 271. All the RBOCs need do is prove at the state public utility commission the claims they have been making in the press and they will overcome the first hurdle to entry.
- Some of the most vocal critics of the BOCs, like cable companies and competitive access providers, are not long distance companies. They have nothing to lose by getting into the local business and everything to gain, but they have run into the maze of anti-competitive, discriminatory roadblocks that have been put in the way of competition.
- The most likely competitors for RBOCs, other RBOCs, have largely been missing in action as competitive new entrants into local market outside their regions.

FACILITIES-BASED COMPETITION IS INADEQUATE TO MEET THE STANDARD IN SOUTH CAROLINA

BST does not face a facilities-based competitor, even though requests for interconnection have been made. Lacking a facilities-based competitor in South Carolina and failing to make a showing that potential competitors have not lived up to their part of the bargain, BST has tried to redefine the standard by which the competitive situation should be measured. This has no basis in the Act.

- BST does not meet the Track A requirement; cannot use the Track B requirement; would not meet the Track B requirement, even if it could proceed under that option; and has incorrectly tried to combined Track A and Track B to get around its fundamental failure to meet either.

THE COMPETITIVE CHECK LIST

Recognizing that competitors would have to interconnect with the incumbent local exchange companies to offer local service and that they would find it difficult to supply many of the functionalities necessary for local service, the Congress imposed a series of obligations -- the competitive checklist -- on the RBOCs. Out of the 14 points on the competitive check list, BST has not met nine (see Table ES-1).

- BST has failed to establish cost-based pricing in South Carolina.
- BST has performed poorly in making interconnection and access to unbundled network elements available on non-discriminatory terms.
- BST has failed to fully define and implement performance measures as required.

A fundamental problem in the process of opening the local network to competition is that RBOC cooperation is crucial, but BST has made it extremely difficult for competitors.

- BST has entered into a series of arbitration agreements with potential entrants, but has repeatedly failed to live up to the terms of those agreements.
- BST has been ordered to make certain services available and take certain actions to facilitate local competition but has failed to do so and its proposed Statement of Generally Available Terms (SGAT) fails to comply with those orders.
- BST has refused to implement standards that it is challenging and refuses to subject disputes that arise to the resolution process to which it agreed.

The practical reality is that entering the market to compete with the incumbent is extremely difficult if entrants are:

- forced to build a new network from scratch, or required to rent pieces of the existing network (loops, cables, or switches) at terms and conditions that are discriminatory and result in higher prices or lower quality; or are not able to hook up to the existing network, so that customers can reach all telephone subscribers.

**TABLE ES-1
BELLSOUTH
SECTION 271 [C](2)(B) COMPLIANCE
COMPETITIVE CHECKLIST**

	ITEMS								
	1	2	4	5	6	7	11	13	14
FINAL RATES, TERMS, AND CONDITIONS									
LEGAL OBLIGATIONS	N								?
STATE APPROVED AGREEMENTS									
COURT CASES	N								
INTERIM ORDERS	N	N							
USAGE RIGHTS	?								
COST-BASED RATES	N	N	N			N			N
ACCESS TO INFORMATION									
PRE-ORDER	N	N							N
ORDER		N							N
PROVISION	N	N							N
REPAIR AND MAINTENANCE	N	N							
BILLING		N	N	N	N				N
FULLY LOADED FUNCTIONING									
SUFFICIENTLY AVAILABLE	N	N							N
DEPLOYED	N								
ACCESS IN VOLUME	N	N							N
ASSISTANCE FOR USERS	N	N							N
OPERATIONALLY READY									
TESTS/PILOTS									
INTERNAL									
THIRD-PARTY	?								
INTER-CARRIER	N								
PERFORMANCE STANDARDS									
AUTOMATED		N							N
QUALITY/RELIABILITY	?	N							N
EQUAL FOR ALL	N	N		N	N	N	N	N	N
EXCLUSIONS	?	?							?
PERFORMANCE ASSESSMENT									
INSTALLATION INTERVALS	N	N	?						N
INTERFACE & INTERNAL OSS		N							N
ACCURACY		N							N
HELD ORDERS	N	?	?						?
BILL QUALITY		N	N	N	N				N
REPEAT TROUBLE	?	?	?						?
REMEDIES FOR NONCOMPLIANCE	N	N	N						N

" " = IN COMPLIANCE OR NOT APPLICABLE; N = NOT IN COMPLIANCE, " " = NOT APPLICABLE, ? = COMPLIANCE UNCLEAR

Source: Derived from Division of Communications and Division of Legal Services, Florida Public Service Commission, Memorandum, Docket No. 960786-TL - Consideration of BellSouth Telecommunications Inc.'s Entry into InterLATA Services Pursuant to Section 271 of the Federal Telecommunications Act of 1996, October 22, 1997, and Department of Justice, "Evaluation of the United States Department of Justice," Federal Communications Commission, In the Matter of Application by BellSouth Corporation, et. al. for Provision of In-Region, InterLATA Services in South Carolina, CC Docket No. 97-208, September 30, 1997.

Attracting customers as a new entrant is extremely difficult if:

- directory assistance, emergency service (911), or operator services cannot be provided at equal quality and cannot be branded with the company's name; or customers must wait longer to place their order and have it filled, or because of scheduling problems, find their number does not work when they expect it to or they receive multiple bills for the same service.

Under these circumstance, the entrant is likely to bear the burden and take the blame for problems caused by the incumbent. These are just a few of the problems in the current approach of BST.

Table ES-2 presents a list of problems identified in BellSouth's provision of resale. This checklist item is also specifically identified in sections 251 and 252 of the Act. It would play an important role in defining local competition should BST be allowed early entry it long distance, since this is the path that most competitors would be forced to take to put together service bundles to try to match the advantage of the RBOCs. It is easy to see why competitors would have trouble getting into the local market under these circumstance.

The conclusion is overwhelmingly clear from the analysis of the BST application.

- Local competition is not happening.
- Local competition is not happening because the incumbent local exchange companies do not want it to and are resisting.
- Local competition will not happen under these terms and conditions.

The recommendation of the DOJ and the South Carolina Consumer Advocate to reject BST entry under these circumstances is correct. If these are the terms and conditions RBOCS are allowed to impose on competitors, then meaningful competition will not be forthcoming and the 1996 Act will be a major failure. Not only should the FCC reject the application for entry into in-region interLATA services, but regulators need to go on the offensive, requiring incumbents to live up to their responsibilities. RBOC foot dragging is denying the public the benefits of competition in both the local and long distance markets.

TABLE ES-2
PROBLEMS IN PROVISION OF NON-DISCRIMINATORY ACCESS
TO RESOLD SERVICES IN THE BELL SOUTH REGION

OPERATING SUPPORT SYSTEM PROBLEMS

PRE-ORDERING

- 1: Multiple address validation for the same fields in different screens
- 2: No on-line customer credit checking capability and limited availability of customer services record information.
- 3: Requires human intervention
- 4: BST can reserve more telephone numbers than ALECs
- 5: Cumbersome and inefficient methods of locating long distance company selected by customers and product service information
- 6: Does not provide access to calculated due dates in the inquiry mode

ORDERING AND PROVISIONING

1. Do not have electronic capability at parity with BST's
2. No order summary screen exists
3. Intervenor cannot access or make changes to pending orders.
4. BST has not provided requesting carriers with the technical specifications of the interfaces.
5. Interfaces are not fully electronic or integrates.
6. Insufficient capacity to meet demand.
7. Insufficient testing and documentation.

MAINTENANCE AND REPAIR

1. A proprietary system that does not provide ALECS with machine-to-machine functionality
2. Interface lacks sufficient capacity to meet demand.

BILLING

1. BellSouth cannot render accurate bills for resold services

RESALE PROBLEMS

1. Voice mail service is not being provided on an unbranded basis
2. Disparity in conversion of customers
3. Manual ordering

Source: Division of Communications and Division of Legal Services, Florida Public Service Commission, Memorandum, Docket No. 960786-TL - Consideration of BellSouth Telecommunications Inc.'s Entry into InterLATA Services Pursuant to Section 271 of the Federal Telecommunications Act of 1996, October 22, 1997, pp. 263-283.

I. BACKGROUND AND RECOMMENDATION

A. RECOMMENDATION

The Consumer Federation of America (CFA) respectfully submits these comments in the proceeding to evaluate BellSouth Telecommunications' (BST) request to provide in-region, interLATA long distance service in South Carolina¹ under section 271 of the Telecommunications Act of 1996 (the Act).² We urge the Federal Communications Commission (FCC) to deny that request.

Based upon the state³ and region-wide⁴ evidence on BST performance of the requirements of section 271, we believe that BST falls far short of meeting the conditions for entry into in-

¹Federal Communications Commission, In the Matter of Application by BellSouth Corporation, et. al. for Provision of In-Region, InterLATA Services in South Carolina, CC Docket No. 97-208, September 30, 1997.

²47 U.S.C. section 271.

³In the Matter of: BellSouth Telecommunications, Inc. Application for Authority to Provide In-region InterLATA Service, Before the Public Service Commission of the State of South Carolina, Docket NO. 97-101-C. "Brief of the Consumer Advocate," In the Matter of: BellSouth Telecommunications, Inc. Application for Authority to Provide In-region InterLATA Service, Before the Public Service Commission of the State of South Carolina, Docket NO. 97-101-C (hereafter, Consumer Advocate); "Testimony of Allen Buckalew," In the Matter of: BellSouth Telecommunications, Inc. Application for Authority to Provide In-region InterLATA Service on Behalf of the Consumer Advocate, Before the Public Service Commission of the State of South Carolina, Docket NO. 97-101-C (hereafter, Buckalew).

⁴Department of Justice, "Evaluation of the United States Department of Justice," Federal Communications Commission, In the Matter of Application by BellSouth Corporation, et. al. for Provision of In-Region, InterLATA Services in South Carolina, CC Docket No. 97-208, September 30, 1997 (hereafter, DOJ BST). "Appendix A: Wholesale Support Process and Performance Measures," and "Marius Schwartz, "The "Open Local Market Standard" For Authorizing BOC InterLATA Entry: Reply to BOC Criticisms," which is Exhibit 2 of the DOJ evaluation (hereafter, Schwartz). Division of Communications and Division of Legal Services, Florida Public Service Commission, Memorandum, Docket No. 960786-TL - Consideration of BellSouth Telecommunications Inc.'s Entry into InterLATA Services Pursuant to Section 271 of the Federal Telecommunications Act of 1996, October 22, 1997(hereafter, Florida Staff).

region long distance. This conclusion has been reached, not on the basis of legal technicalities or nit picking objections, but very severe problems in BST's implementation of the 1996 Act. The problem in BST's application run a wide gamut from fundamental legal problems, to operational difficulties, to very severe weaknesses in BST's provision of access to the public switched network.

Irreversible competition for local telecommunications service does not now exist in South Carolina, particularly for residential customers. Should BST's practices persist, there will continue to be little chance for meaningful local competition to develop for residential customers in South Carolina. The evidentiary record demonstrates not only that there is no real competition for residential ratepayers, not only that BST has failed to meet the requirements of the Act, but that BST has been actively creating severe problems for potential competitors.

No one expected the Regional Bell Operating Companies (RBOCs) to like the section 271 process -- companies do not give up a monopoly willingly -- but the RBOCs must comply with the law for two reasons. In the first instance, they must open their local monopoly to competition to obtain section 271 permission to enter the in-region interLATA long distance market. Ultimately, they must comply to meet the requirements of sections 251 and 252 of the Act. The DOJ, the FCC, and state regulatory authorities must stand firm in the face of the refusal of the RBOCs to comply with the law. Withholding section 271 approval is the last chance for local competition, the only tangible incentive the RBOCs have to irreversibly open their markets to competition.

The FCC must continue to reject the RBOC applications until the RBOCs get it right.

This is not, and must not be, a war of attrition, as some have suggested,⁵ in which the FCC will eventually say "yes" because it is too tired to keep saying "no."

- o The benefits of local competition are overwhelming.
- o The policy path to local competition and long distance entry is clear in the law.
- o The form and substance of the process have been well defined and articulated by the FCC and the DOJ.
- o The substance and process have been supported by a wide array of state officials and public interest groups.

Regulators must stay the course, if the competitive promises of the Act are to be realized.

B. QUALIFICATIONS

Founded in 1968, the Consumer Federation of America (CFA) is the nation's largest consumer advocacy group. Composed of over 250 state and local affiliates representing consumer, senior citizen, low-income, labor, farm, public power, and cooperative organizations, CFA's purpose is to represent consumer interest before the congress and the federal agencies and to assist its state and local members in their activities in their local jurisdictions.

The Consumer Federation of America has extensive experience in the Telecommunications field. CFA has two decades of experience, interest and involvement in telecommunications policy at the federal and state levels. CFA has participated in virtually every major regulatory proceeding affecting residential consumers at the FCC in the past decade. CFA has conducted major studies on telecommunications infrastructure, universal service, and competition policy. It

⁵Washington Post, November 3, 1997, B-1.

has participated in court proceedings involving all aspects of telecommunications policy.

CFA has also been actively involved in the section 271 process. CFA member groups have been monitoring and participating in section 271 proceedings in a number of states.⁶ CFA has filed comments at the state and federal levels. Moreover, CFA has devoted substantial effort to reviewing the general evidence that has developed in section 271 applications.

C. BASIS FOR THE RECOMMENDATION

Our recommendation that the FCC reject BST's application is based on the extensive analysis presented in these comments. The comments are divided into three parts -- the comments themselves in Part I and two Attachments, contained in Parts II and III.

Part I, which includes this introduction, gives an overview of the case against BST entry into in-region interLATA long distance in South Carolina. Because the Regional Bell Operating Companies have already begun their typical, high-priced public relations campaigns to influence regulators and policy makers,⁷ we endeavor in this section to state the case against entry in plain language. The remaining two Parts are more technical.

Part II is an attachment which presents a review of the legal and regulatory framework for deciding section 271 requests that had developed up until the time of the filing of the SBC court

⁶For example, the Consumer Federation of Michigan filed extensive comments in the Ameritech Michigan Application (see Part II, below). The Florida Consumer Action Network (FCAN) has been active in the 271 process. Consumer's Union has been active at both the federal and state levels (e.g. Texas).

⁷In early November 1997, the United States Telephone Association (USTA) began running ads in Washington D.C., targeting the FCC decision on whether to allow RBOC entry into interLATA long distance. Previously, BellSouth had apparently orchestrated a letter writing campaign to the FCC (see Telecommunications Reports, October ?, 1997 and Washington Telecomm Daily, October ?, 1997, for press accounts.

challenge to section 271.⁸ In these comments, we base our analysis on the approach developed by a series of consumer protection, regulatory, and anti-trust authorities prior to the SBC court challenge. Up to that point, the Department of Justice (DOJ), the FCC, and a number of Attorneys General had articulated a comprehensive and legally well grounded view of section 271 that furthered the clear intention of the Act to use the section 271 process to ensure competition in local telecommunications markets.

The SBC court case marks a turning point in the section 271 process since it appears that with that challenge, the attitude of some of the Regional Bell Operating Companies changed. When it became clear that these authorities intended to give teeth to section 271, several of the RBOCs appear to have decided not to comply. In addition to attacking the law in court, the RBOCs began to blame the failure of local competition on everyone but themselves and brought forward clearly deficient applications, more intended to see what they could get away with than complying with the Act.

In Part III is an attachment which presents a series of citations from the public interest evaluations of the BST South Carolina application and BST policies and practices region-wide that support our recommendation that its application be rejected.

As with our overall framework for analysis, we have based our evaluation of the compliance of BellSouth Telecommunications with the section 271 requirements and our recommendation for denial of that application on positions taken only by third parties with no

⁸SBC Communications Inc., Southwestern Bell Telephone Company, Southwestern Bell Communications Services - Texas, Inc., Pacific Bell, pacific Bell Communications, and Nevada Bell, v. Federal Communications Commission and United States of America, Northern District of Texas, Wichita Falls Division, Civil Action No. 7-97CV-163-X, August 2, 1997.

commercial interest in the outcome, but a charge to protect the consumer and public interest.

Throughout these comments we rely only on the conclusions of anti-trust authorities, regulators, People's Counsels, and public interest groups. In the case of South Carolina specifically, we rely on three primary sources --

- o the opinion and testimony of the South Carolina Consumer Advocate, which addresses primarily the public interest standard for entry,
- o the evaluation of the U.S. Department of Justice, which has stressed the competitive aspect of the filings, and
- o the evaluation of the Florida public service commission staff of BST's technical and operational systems, which addresses the details of BST's compliance with the Act.

It is obvious why the opinion of the South Carolina Consumer Advocate and the DOJ are important. The reason we rely on the Florida staff evaluation is simple and equally important, but perhaps less obvious. BellSouth has declared that its systems and procedures for implementing section 271 are region-wide. As the Florida staff analysis puts it:

Staff notes that BellSouth's witness Milner testified that BellSouth systems are region-wide.

In some cases a given resold service or unbundled network element is not in service in Florida,... Availability in Florida, though, is evidenced by BellSouth providing the resold service or unbundled network element in any of the nine states in its region. This is because BellSouth uses the same processes in Florida as in the other states in BellSouth nine-state region to respond to requests from ALECs for resold services, unbundled network element, and interconnection agreements.⁹

In essence, BST says that it is doing the same thing in all the states. Florida is the place to

⁹Florida Staff, p. 165.

start with and must play a central role in any evaluation of BST's region-wide operation for a number of reasons.

- o Florida is by far the largest state in the BST region and substantial resources were devoted to the matter on all sides in this state.
- o The Commission held a full evidentiary hearing with discovery and cross examination.
- o The staff has taken the task of reading the hearing record seriously, interpreted the Act with good common sense, understands the huge stake that the public has in launching local competition on a secure footing, and has analyzed the issues with care and professionalism.
- o The hearing record and the staff report make direct reference to examples of practices in several other states in the region, thereby verifying that the practices are region-wide. In fact, the staff analysis in several other BST states has reached similar conclusions as in Florida and recommended denial of section 271 applications.

The Department of Justice has made a similar observation on the relevance of region-wide evaluation of certain functionalities and policies.¹⁰

¹⁰DOJ BST, p. 15... Appendix a, pp. 7-8. , puts it as follows:

However, some checklist determination as -- -- such as determinations on OSS issues, where each of the BOCs generally has employed a single region wide system -- -- may as a practical matter require determinations that affects states throughout a BOCs entire region. In considering such issues, the Commission may confront situations in which one state conclude that a BOC's OSS arrangements comply with the checklist, while another state examining the same arrangements finds checklist deficiencies. The Department will apply a uniform standard for all states in a BOCs region and a uniform standard that applies to all BOCs...

BellSouth's processes are operated on a regional, rather than a state-by-state basis, and thus our analysis is not limited to South Carolina activities. Satisfactory performance in the other states will be recorded as evidence that the same systems will work satisfactorily in South Carolina, unless there are specific reasons to conclude otherwise. Conversely, if a problem exists with BellSouth's processes in another state, we assume that the problem exists in South Carolina unless shown otherwise.

Second, the Department notes that BellSouth processes are operated on a regional basis,

We refer to the region-wide evidence only in the circumstances where it is relevant to the South Carolina application. There are two such circumstances. It is relevant where it refers to technical systems which are region wide and where it refers to BST interpretations of the law, which are corporation-wide. We do not cite region-wide evidence to establish South Carolina-specific facts.

rather than a state-by-state basis, and that not all state commissions in BellSouth's region are equally satisfied with BellSouth systems and the access to those systems that BellSouth presently providing to CLECS.

II. UNDERSTANDING THE PROBLEM IN EVERY DAY TERMS

Since the RBOCs have begun their public relations and political campaign to influence regulators, this section presents a brief overview of the issues at stake in the section 271 proceedings in simple terms. The millions of pages of testimony and the constant filing of court cases and regulatory appeals can be boiled down to a handful of crucial questions that can be described in ordinary terms. Subsequent sections will add the footnotes, legal arguments and technical jargon that pervade these regulatory proceedings.

A. THE GOAL: PROMOTING THE PUBLIC INTEREST BY PROMOTING COMPETITION IN ALL TELECOMMUNICATIONS MARKETS

1. Both Long Distance and Local Markets Must be Considered

BST has gone to great lengths to make the claim that allowing it to enter the long distance market in-region would promote the public interest because it would bring greater competition to the long distance market. It has properly stated the question -- how can the public interest best be served by the introduction of competition in telecommunications markets? Unfortunately, it has gotten the answer wrong. BST's claims are fundamentally flawed for two reasons.

- o It vastly overstates the benefits of RBOC entry into the long distance market.
- o It completely ignores the benefits of creating competition in the local market.

Having a proper understanding of what is to be gained and lost with RBOC entry is central to the entire logic of the Act. The key point is that all marketplaces are to be opened to

competition and the impact on both local and long distance markets must be considered (see Attachment 2 Chapter 1 section A.1).

2. Estimating Savings in the Long Distance Market

The DOJ has presented a vigorous and precise refutation of BST's benefits claims. The DOJ has shown that BST and the RBOCs are far off the mark in their estimates (see Attachment 2 Chapter 1, section A.2).

- o Just as marketers use fraudulent and misleading comparisons in their advertising, BST's witness compare the lowest discounted price offered by LEC entrants into the long distance market to the competitors' highest undiscounted rates, forgetting that there is a great deal of discounting already in the market.
- o BST's discounts are actually no larger than many observed in the marketplace.
- o BST uses different prices for different purposes. BST's hired external witness assumed discounts that are three times larger than BST officials were willing to commit to.
- o BST also assumes that all customers use the same amount of long distance service. In fact, the few customers who could save by switching from an undiscounted rate to a discounted rate consume much less, so their savings have been overestimated.

When these mistakes are eliminated, the overwhelming majority of consumers are not likely to save a great deal as a result of BST entry into the long distance market.

3. Creating the Benefits of Local Competition

Both the Consumer Advocate and the DOJ have pointed out that BST's analysis of the public interest ignores the benefits of competition in the local market. Both conclude that there is

vastly more to be gained by obtaining increased competition in the local market than in the long distance market (see Attachment 2 Chapter 1, section A.3).

- o The local market is twice the size of the long distance market.
- o The local market remains a near monopoly, as it has been for almost a century, while the long distance market has been subject to competitive forces for almost two decades.

While CA and DOJ recognize that the long distance market is not perfectly competitive, they recognize that it is more competitive than the local market. Neither has made an estimate of the relative gains to consumers in the two market. In Part II CFA estimates that for every one dollar of savings consumers might realize from increased competition in long distance, there are four or five dollars that might be gained as a result of introducing competition into the local market).

4. The Costs of Allowing Premature RBOC Entry into Long Distance

The problem of premature entry of RBOCs into in-region long distance should be seen to include more than the quantified value of price cuts. Premature entry has a number of anti-competitive implications that would deal a severe blow to local competition (see Attachment 2 Chapter 1, section A.4).

- o RBOCs would lose their incentive to cooperate in opening their markets to competition.
- o Premature entry allows the RBOCs to be the only entity that can offer an attractive integrated bundle of services.
- o Premature entry drives competitors to use resale as the primary approach to competition, since that is the easiest alternative, but it is the form of competition that provides the least threat to

incumbents.

- o Premature entry forces regulators to rely on policing post-entry behavior which is much more difficult to implement to promote and protection competition than imposing pre-entry conditions on the RBOCs.

5. The Reasons for the Failure of Local Competition

BST claims that local competition has not been created because the long distance companies are gaming the regulatory process by not trying hard enough to get into the local market because they do not want the RBOCs to get into long distance. Simple logic refutes this claim and the evidentiary record in this proceeding demonstrates that BST has made it extremely difficult to enter the local market. Indeed, some of the most vocal critics of Bell South are competitors who are not long distance companies. They have nothing to lose by getting into the local business and everything to gain, but they have run into the maze of anti-competitive, discriminatory roadblocks that BST has put in the way of competition.

It is also worth noting that the most likely competitors for RBOCs, other RBOCs, have been remarkably absent from one potentially competitive marketplace that they know very well, local service. The Consumer Advocate asks, if it is so easy to get into local, why hasn't BellSouth entered Bell Atlantic's service territory.

There are a range of specific problems that competitors face, some which are inherent in the task of displacing a century old monopoly, but many of which have been created by the actions and policies of the incumbents (see Attachment 2 Chapter 1, section A.5).

- o The bottom line is that residential ratepayers do not have a choice for telephone service in South Carolina and the reason is that competitors cannot get into the market on terms and conditions that

make competition workable.

Entry into in-region long distance, which BST clearly covets, is the only strong incentive that the Regional Bell Operating Companies have to truly open their networks to competition and ease their stranglehold on local telephone service. Particularly in South Carolina, where local profits have been deregulated, consumers are dependent on the growth of competition to produce the declining prices that were promised with the 1996 Act.

B. MAKING THE PROCESS WORK

1. The Need for Cooperation

There is a fundamental problem in the process by which the opening of the local network to competition has been progressing and the core of the problem is the unwillingness of the RBOCs to make the process work. RBOC cooperation is crucial, but BST has singled out potential competitors and made it extremely difficult for them to enter the market (see Attachment 2 Chapter 1, section B.1).

The Florida staff concluded that

BST has yet to develop the ability, and by the testimony of its witnesses, the mind-set, to provide all facets of interconnection as required in the Act in a timely and efficient manner.¹¹

Both the Consumer Advocate and the DOJ found evidence of similar intransigence on the part of BST. Examples of this problem abound in the evidentiary record.

¹¹Florida Staff, p. 83.

2. A Consistent and Repeated Failure to Comply with Contracts and Commission Orders.

BST has entered into a series of arbitration agreements with potential entrants. It has repeatedly failed to live up to the terms of those agreements (see Attachment 2 Chapter 1, section B.2).

BST has been ordered by the Commission to make certain services available to and take certain actions to facilitate local competition. It has failed to do so and its proposed Statement of Generally Available Terms (SGAT) fails to comply with those orders. The staff identifies at least six instances in which BST has simply ignored its obligations.

BST has repeatedly refused to implement standards that it is challenging legally, while it unilaterally takes actions that others are challenging. It refuses to subject the disputes that arise to the resolution process to which it agreed.

C. CONCLUSION

BST has, for years, entered into cooperative relationships with non-competing companies. It refuses to cooperate with potential competitors. The result of this attitude is that potential competitors cannot count on BST behavior. Since they cannot count on being fairly treated, they are hesitant to commit their resources. If they knew that BST would live up to its commitments and obligations, they would be more willing to enter the market. In essence, they are still trying to work out a set of behavioral ground rules on which investment can be made.

Because the Congress recognized that it would be difficult to eliminate the barriers to entry created by a hundred year old monopoly in local telecommunications service, Congress outlined a lengthy and rigorous set of steps through which RBOCs would have to go to open their

network before they would be allowed to provide interLATA service within their home service regions (see Table 1). In addition to the public interest standard discussed in this section, there were three areas in which Congress established specific steps -- facilities based competition, the competitive check list, and affiliates safeguards. The Consumer Advocate, the Department of Justice, and the Florida staff conclude that BST has failed to meet the first two by a wide margin. Having reached this conclusion, they have not considered the third area.

TABLE 1
SUBSTANTIVE CONDITIONS FOR APPROVING RBOC ENTRY INTO IN-REGION, INTERLATA LONG DISTANCE

<u>SECTION 271(c)(1)</u>	<u>SECTION 271(c)(2)</u>	<u>SECTION 272</u>	<u>SECTION 271(d)(3)</u>
PROVIDE ACCESS AND INTERCONNECTION TO FACILITIES-BASED COMPETITOR	PROVIDE 14 POINT CHECK LIST ITEMS	SATISFY 272 REQUIREMENT	IN THE PUBLIC INTEREST
TRACK A OR TRACK B	FULL IMPLEMENTATION OF NON-DISCRIMINATION RATES, TERMS, CONDITIONS AND PROTECTIONS		
TRACK A: IS PROVIDING ACCESS AND INTERCONNECTION TO NETWORK FACILITIES FOR THE NETWORK FACILITIES OF ONE OR MORE UNAFFILIATED COMPETING PROVIDERS OF TELEPHONE EXCHANGE SERVICE TO COMPETITION RESIDENTIAL AND BUSINESS SUBSCRIBERS. STANDARD	INTERCONNECTION IN ACCORDANCE WITH SECTIONS 251 [C] (2) AND 251 [D](1) 1) NON DISCRIM. IN ACCORDANCE SECTION 251 [C](3) AND 251 [D](1) 2) NON-DISCRIM. ACCESS TO POLES 3) LOCAL LOOP 4) LOCAL TRANSPORT	SEPARATE AFFILIATE STRUCTURAL AND TRANSACTIONAL REQUIREMENTS NON-DISCRIM. SAFEGUARDS BIENNIAL AUDIT FULFILLMENT OF REQUESTS	PUBLIC INTEREST, CONVENIENCE AND NECESSITY COMPETITIVE TEST DANGEROUS PROBABILITY TO SUBSTANTIALLY IMPEDE VIII[C] TEST ANY OTHER SUBSTANTIAL
TRACK B: IF EVIDENCE NO SUCH PROVIDER HAS REQUESTED THE ACCESS & INTERCONNECTION IN TRACK A OR FAILED TO NEGOTIATE IN GOOD FAITH, UNDER SECTION 252 OR VIOLATED TERMS OF AN AGREEMENT UNDER SECTION 252 THEN: STATEMENT OF GENERALLY AVAILABLE TERMS APPROVED BY STATE COMMISSION	5) LOCAL LOOP 6) LOCAL SWITCH 7) NON-DISCRIM 11 & E911 DIRECTORY OPERATOR 8) WHITE PAGES 9) NON-DISCRIM. NUMBERING 10) NON-DISCRIM DATA BASES 11) INTERIM NUMBER PORTABILITY 12) NON-DISCRIM. LOCAL DIALING PARITY 13) RECIPROCAL COMPENSATION UNDER SECTION 252 [D](2) 14) RESALE UNDER SECTIONS 251[C](4) AND 252[D](2)	PROHIBITION ON JOINT MARKETING	OTHER FACTORS QUALITY CONSUMER PROTECT RATE STRUCTURE
CONTROVERSIES			
TRACK A REQUEST FORECLOSES TRACK B	FINAL RULES	IMPLEMENTED	NATURE OF HEARING
ANALYSIS PROVIDE ACCESS AND INTERCONNECTION	PERFORMANCE STDS	MONITORED	COMPETITION
APPROVED AGREEMENT PREDOMINANTLY FACILITIES-BASED BUSINESS AND RESIDENTIAL	FULLY LOADED FUNCTIONING MONITORING ENFORCEABLE	MEANINGFUL, NON-TRIVIAL, REAL, SUBSTANTIAL, IRREVERSIBLE COMPETITION	

III. FACILITIES BASED COMPETITION

A. FACILITIES BASED COMPETITION IS INADEQUATE TO MEET THE STANDARD IN SOUTH CAROLINA

Because of the pervasive market power of the ubiquitous, interconnected telecommunications network, Congress required that there be a facilities-based competitor to the incumbent RBOC before it would be allowed to enter the in-region, interLATA market. This was the first condition set on entry and has come to be known as Track A. Congress required a facilities-based competitor for both residential and business customers. There is no such competitor or competitors in South Carolina (see Attachment 2 Chapter 2, section A).

B. MOVING FROM TRACK A TO TRACK B

Because Congress understood that entry would be difficult and there would be a variety of incentives and interests at work as the local monopoly was dismantled, Congress gave the RBOCs an alternative approach, known as Track B. If no request for interconnection were made by a facilities-based competitor, or it could be shown that the competitor did not negotiate in good faith or failed to meet agreed upon timetables, the RBOC could be allowed to enter the in-region InterLATA despite the lack of a facilities-based competition. To qualify for Track B, RBOCs have to show that Track A does not apply and it offers to provide interconnection and access subject to an approved Statement of Generally Available Terms (SGAT) (see Attachment 2 Chapter 2, section B).

- o For all the complaining about long distance companies strategically